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**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**JON RANDALL COPE,**

Plaintiff-Appellant,

v.

**CITY OF PHOENIX,**

Defendant-Appellee.

No. 04-15003

D.C. No. CV-01-00877-SMM

**MEMORANDUM** \*

Appeal from the United States District Court  
for the District of Arizona  
Stephen M. McNamee, District Judge, Presiding

Submitted October 19, 2005\*\*  
San Francisco, California

Before: **BEEZER** and **KOZINSKI**, Circuit Judges, and **CARNEY**,\*\*\* District Judge.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Cormac J. Carney, United States District Judge for the Central District of California, sitting by designation.

Jon Cope appeals the district court's summary judgment in favor of the City of Phoenix in Mr. Cope's action alleging that the City violated his rights under the Family and Medical Leave Act ("FMLA"), Pub. L. No. 103-3, 107 Stat. 6 (1993)(codified at 29 U.S.C. §§ 2601-2654), by discharging him from the Phoenix Police Department while he was allegedly suffering from depression. The district court properly granted summary judgment in favor of the City because Mr. Cope failed to notify the City prior to the time it made its decision to discharge him that he was seeking FMLA leave. *See* 29 C.F.R. §§ 825.302-.303. In any event, Mr. Cope has not demonstrated that, at the time of his discharge, he was suffering from a "serious health condition" entitling him to FMLA leave. *See* 29 U.S.C. §2612(a)(1)(D); 29 C.F.R. §825.114; *Scamihorn v. Gen. Truck Drivers*, 282 F.3d 1078, 1084-85 (9th Cir. 2002).

**AFFIRMED.**